IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No. 12 of 2003
Reserved on : 7-5-2007.

Date of Decision: 15-6-2007.

Lekh Ram & another Petitioners.

Versus

State of H P & others Respondents.

Coram

Hon'ble Mr. Justice Deepak Gupta, Acting C. J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the petitioner : Mr B K Malhotra, Advocate.

For respondents No.1 and 2: Mr M.S Chandel, Advocate General, with Mr Ram Murti Bisht, Deputy Advocate General.

For respondents No. 3 to 6. Mr R K Bawa, Senior Advocate, with Mr Raj Paul Thakur, Advocate.

Per **Surinder Singh, J .**

The appellants feeling aggrieved and dissatisfied with the judgment dated 22-5-2003 passed in Civil writ petition No. 375 of 1995 whereby the learned Single Judge dismissed their petition under Article 226/227 of the Constitution of India, seeking to quash Annexure-PE dated 27-1994, Annexure-PH dated 18-4-1995 and Annexure-PJ dated 16-5-1995.

The necessary facts giving rise to this appeal are that:-

i) Village Baldwara, Tehsil Sarkaghat, District Mandi, H.P. was under consolidation pursuant to the notification issued under Section 14 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (hereinafter referred to as the 'Act').

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[1] Whether reporters of the Local papers are allowed to see the judgment?

ii) after issuance of the notification, aforesaid, a declaration was published in the official Gazette;

iii) demarcation was carried out and other formalities were completed and the Scheme was published. Thereafter consolidation proceedings were initiated. As per the Scheme, the entire area was divided into various blocks related to the value and nature of the land as per the provisions of Section 22 (2) of the Act.

iv) the appellants were the owners in possession of 32.82 Hects in Khasra Number 1179/2 and 1173. Therefore, their land at a particular place was 84% in 16 anna D land;

v) the Consolidation officer started re-partition under Section 30 of the Act, allotted 6.54 Hect of land to the appellants out of total area of 17.43 Hects belonging to some other co-sharers and Diwana Ram, predecessor-in-interest of respondents No.3 to 6.

vi) the next major portion in the block was of Diwana Ram, the predecessor-in-interest of respondents No.3 to 6 who was having the land measuring 17.45 Hect in Khara Number 1178,i.e, 26% of 16 Anna value. Therefore, he was required to be allotted by carving out the same to the extent of 50% from the holdings and thereafter right-holders having their major portion in that particular block. Diwana Ram was having the next major portion i.e. 17.43 hect and out of this as per the land, up to 50% of the same value was permissible to be deducted and allotted to the appellants.

vii) the Consolidation Officer, pursuant to the Scheme of the consolidation, actually allotted land to the appellants by carving out the holdings of the predecessor-in-interest of respondents No.3 to 6 to the extent of 50% and were put in possession of the land to the extent of 0-6-54 Hects of the land from khasra number 1178.

viii) whereas, said Shri Diwana Ram, aforesaid, was to be allotted a land of the same value, i.e, 16 anna D in lieu of the land excluded

from Khasra Number 1178 in order to compensate him in accordance with the Scheme. He was adjusted near khasra number 437 where he was allotted land by deducting it from the holdings of the appellants as well as other right holders. Thus, his holdings were consolidated at a particular place after making the allotments and adjustments of the land by the Consolidation Officer and both the parties were put into possession according to the allotment of the land.

ix) Said Shri Diwana Ram had filed objections, which were dismissed by the Consolidation Officer on 26.6.88 thus having felt aggrieved by the order dated 26-6-1988, he filed an appeal No. 92/88 before the Settlement Officer (Consolidation). While allowing the appeal, he made the following adjustment of the land between the parties, keeping in view the convenience of said Shri Diwana Ram.

Sr. No.	Name of owner.	Area excluded. Kh. No. Area. Old. New.	Area included. Kh.No. Area. Old. New.
1.	Sh. Diwana s/o Ram Ditta Khewat No. 39.	436 min/ 345 5-08/ 1 509 min 1 437 346/1 1-45 6.53.	1178 1005 6-54. 1.
2.	Sh. Lekh Ram, Jeet Ram, Vijay Kumar, sons, and Smt. Ram Dei, wd/o Lohaku, Khewat No. 92.	1178/1 1005. 6.54.	436min. 345 5.08 509/1 min 437 346/1 1-45 Total: 6-53.

x) but the appellants did not feel satisfied and filed an appeal under Section 30 (4) of the Act before the Additional Director of Consolidation, was dismissed vide order dated 27-10-1994 (Annexure-PE);

x) the appellants being un-successful in appeal before the Additional Director, Consolidation, filed a revision petition under Section 54 of the Act which was also dismissed by the Director (Consolidation)

exercising the powers of the State Government, vide order dated 16-5-1995 (Annexure-PJ).

Challenge of the appellants.

Diwana Ram had died. The order of the Settlement Officer (Annexure-PC), that of the Additional Director Consolidation (Annexure-PE) and Director of Consolidation Annexure-PJ) were assailed in the writ petition by impleading the LRs respondents No.3 to 6 of Diwana Ram mainly on the ground that once the Scheme was finalized by the Consolidation Officer, the predecessor-in-interest of respondents No.3 to 6 could not have challenged the orders of Consolidation Officer in appeal nor further orders could have been passed by the revenue authorities as said Shri Diwana Ram had not filed any objection at the time of publication of the Scheme. The order of the Director Consolidation, aforesaid, which was based upon the report of the Consolidation Officer was also wrong and illegal as no opportunity was afforded to the appellants to file the objections to the said report.

Case of the Respondents.

According to the respondents, khasra number 1179/2 measuring 32.82 Hects and Khasra number 1173 measuring 00-00-10 Hect were owned and possessed by the appellants along with Vijay Kumar and Ram Lal, co-sharers, whereas, khasra number 1178 measuring 0-17-43 Hect was in the cultivation of Diwana Ram, predecessor-in-interest of respondents No. 3 to 6 as co-sharers. The Consolidation Staff excluded the land of the predecessor-in-interest of respondents No.3 to 6 to the extent of 0-06-54 Hects from khasra number 1178 and allotted the same to the appellants which was found to be wrong by the Settlement Officer, thus he had rightly restored the land to said Shri Diwana Ram who was originally entitled to keep the same. The appellants were never in physical possession of khasra number 1178 (new Kh. No. 1005) measuring 00-06-54 Hects. The first major portion of other khasra number 1178 measuring

00-17-43 valuing 16D (16 anna) was that of Diwana Ram but he was only given 10.89 Hects out of the said khasra number, whereas, the land measuring 00-06-54 Hects was allotted to the appellants. The appellants were already holding the land to the extent of 32.82 Hects in khasra number 1179/2 wherein they had the first major portion.

Respondents No.3 to 6, further contended that they were allotted the land at five different places by the Consolidation Officer, whereas, the appellants were given land in excess of their shares, consequently, it resulted into a comparative hardship to them. In appeal, the matter was said to have been rightly decided which was up-held throughout in their favour. In nut shell, there case has been that if there was any defect in the re-partition made by the Consolidation Officer, they could always assail it and get it corrected from the superior Authority as per the provisions of Section 30 (3) of the Act.

Grounds in appeal.

Upon hearing the parties and after going through the record, the learned Single Judge did not find any illegality in the orders under challenge and dismissed the petition against which the instant appeal has been filed by the appellants mainly on the grounds that the learned Single Judge did not appreciate the contentions raised before him in its right perspective and further that the Scheme once finalized, could not have been varied in any manner by the authorities under the Consolidation Act. The re-partition was required to be done in accordance with the Scheme without any variation. Further, that the learned Single Judge while passing the judgment, had simply referred to the orders passed by the authorities under the Act without touching the points raised in the petition. According to them, the Consolidation Officer was right in passing the order in their favour regarding re-partition but the matter was not properly thrashed out and appreciated by the superior authorities. The learned Single Judge had fallen into a grave error, hence prayed for acceptance of the appeal.

Contentions before us:

We have heard the learned counsel for the parties and have examined the matter in the light of the points raised.

Shri B.K. Malhotra, learned counsel for the appellants, has vehemently argued that the Scheme prepared and published under Section 29 of the Act, cannot be changed in any manner by any of the authorities. To buttress his arguments, he cited *Mrs. Peter Butt and others –v- Sister Roseline Kokara 1992 (2) Sim.L.C. 124* and *Rajinder Singh and others –v- State of Punjab & another 1976 OLJ-133.* Learned counsel also led us through the facts as contended above and insisted upon that the appellants were entitled for the major portion to the extent of 84% land in 16 anna D and urged that the relief sought in the writ petition should have been granted to the appellants.

Contra, Shri R.K. Bawa, learned Senior Counsel for respondents No.3 to 6 while supporting the impugned judgment has forcefully argued that there was no justification to allot the land to the respondents at five different places in order to accommodate the appellants that too on a valuable portion of the land. According to him, the impugned orders are legal and factually sustainable because the convenience of the parties has been kept in view without disturbing the Scheme. Further, according to him, adjustment has to be done keeping in view the unforeseen circumstances and the scheme has a certain inbuilt flexibility to see that the provisions do not operate harshly to the prejudice of any right holder. He has also ventilated that the superior authorities under the Act and have appreciated the facts in issue in its right perspective and the learned Single Judge has also rightly referred the orders of the authorities to arrive at the correct findings.

To appreciate the rival contentions, we have meticulously examined and looked into the record.

In the instant case, the Consolidation Scheme of Revenue village Baldwara Hadbast No. 478 Illaqua Hatli, Sub Tehsil Baldwara, District Mandi (H.P.) was finalized as per the provisions of Section 22 of the Act and confirmed under Section 29 of the Act. The relevant portion of the Scheme in the case is Annexure-PA/12 the English translation of which reads as under:

> "Para-7. If more than one right holders are having major portion of land at one place and each of the right holder cannot get sufficient land at that place then first of all, the land will be allotted to that holder who will have the maximum percentage and thereafter to the next percentage holder and so on. If it is not possible then all out efforts would be made to allot him land of the same classification in the Block:
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> Percentage means, 'ordinary land of major portion.
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> Total area of the classification in (Block) x 100.
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> Para-31: During partition it should be borne in mind that each right holder gets the maximum land from his major portion in his plot and the land allotted from the major portion should not be less than 50%.
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> Para-38. There are two roads in this village, one road is from Baldwara to Nagrota and the other is from Bilaspur to Jahu. The right holders who are having their land on both sides of the road, that land will be kept intact but land khasra Nos. who are bigger in length can be separated".

The Scheme prepared under Section 22 of the Act which is confirmed under Section 29 is the basis for carrying out repartition with a view to consolidate the holdings. The rights of the parties at repartition are to be governed as per the provisions of the Scheme. The Scheme is the basic document and while preparing the scheme, the Consolidation Officer is required to take into consideration the numerous principles enumerated in sub-section (2) of Section 22 of the Act. One of the principles prescribed therein is that every tenure-holder, as far as may be, allotted land in the block in which he holds the largest part of his holding. At the time of preparation of the scheme, each of the tenure-holder can specify as to

which is his largest part of the holding so as to enable the consolidation officer to work out the allotment during re-partition.

In our opinion, the words, ‘as far as may be’, give discretion to authorities to adjust the land holder to the extent of his major portion. This has an inbuilt flexibility to keep in view, the unforeseen circumstances.

The re-partition was made by the Consolidation Officer, as noticed above. Shri Diwana Ram, predecessor-in-interest of respondents No.3 to 6, felt aggrieved by it and filed the written objections which did not find favour with the Consolidation Officer. Accordingly, he filed an appeal before the Settlement Officer (Consolidation) taking only objection that the area measuring 0-06-54 was excluded from khasra number 1178 was wrongly given to the appellants and this area should have been given to him, whereas, the area given to him in lieu of some area of khasra number 1178 was not acceptable because it was not a consolidated plot. On the careful consideration, the settlement Officer found that Diwana Ram had first major portion (26%) in Khasra number 1178 measuring 1743 Hect. In 16 D Block but he was given only 10.89 area in that khasra number and 6.54 area of this khasra number which was allotted to the appellants whereas, they were already allotted khasra number 1179/2 measuring 32.82 wherein they had the major portion. Undisputedly, said Diwana Ram had first major portion over Khasra Number 1178 (17.43) in 16 D Block (26%). He was given only 10.89 area and 6.54 hect area was allowed to the appellants whereas the appellants were already allotted Khasra Number 1179/2 (32.82 hect) wherein they had 84% share i.e. Ist major portion. The appellants were allowed land reasonably and as far as possible in the said block. By allotting 6.54 area out of khasra number 1178 to the appellants would jeopardize the convenience of the respondents. Thus, the Settlement Officer had rightly made the amendments which otherwise did not materially affect the Scheme.

To appreciate the contentions raised in further appeal against the

orders of Settlement officer, the Additional Director (Consolidation) had also inspected the spot on the request of both the parties and upon hearing them, he found that the residential houses of the parties were located in Baldwara town near the Hospital. Prior to consolidation, the appellants had 0-32-82 Hect land comprising khasra number 1179/2 near their house whereas, the respondent Diwana Ram had 0-17-43 Hect, comprised in khasra number 1178 near his house. The Consolidation Officer vide his order dated 26.6.1988 had taken out 0-06-54 Hect out of khasra number 1178 and reduced the area of the respondents near their house to 0-10-89 Hects and increased the area of the appellants from 0-32-82 Hects to 0-39-36 Hect against their demand of 0-38-42 Hect noticing that every right holder wanted land nearer to his residential house because the land is of a high commercial value because of its location. Therefore, he did not find anything wrong in the order passed by the Settlement Officer Consolidation of Holdings by restoring the land to its original owner. The said Revenue Officer had also gone into the objections of the parties and satisfied himself regarding the factual details on the spot. Thus there appears no error in his order too.

The main object of the Act is to provide for the consolidation of the agricultural holdings and prevent the fragmentation of the agricultural holdings in the State. Looking at the object of the Act and also the fact that the fragmentation of the holdings are to be avoided, in our considered opinion, the Settlement Officer, Additional Director and the Director Consolidation have passed the orders within the framework of the Act looking at its object. The learned Single Judge has also gone into the entire questions raised by the appellants by going through the orders and kept in view the object of the Act. Thus, he rightly appreciated the case law cited above and concluded that the Scheme has not been violated by them in any manner. Otherwise also, the scheme cannot foresee and provide for all the eventualities. In the circumstances, the provisions of the

Scheme must have a certain in-built flexibility so as to see that these provisions do not operate harshly to the prejudice of any right-holder and that there is no strict and rigid adherence to the language of a particular portion or a provision of the Scheme. The Scheme may not appear justified when the rigour of these provisions can be relaxed or toned down wherever the language operates harshly to the prejudice of a particular right-holder. As long as the stretching of the real intention or meaning does not reach the breaking point, in our opinion, no violation of the Scheme can be said to have taken place. In fact, certain amount of freedom in the matter of coming to an honest and bonafide decision can be allowed. Since the authorities whose orders were challenged in the writ petition had acted without any malice or malafide, rather they acted reasonably and rationally within the permissible limits of the Scheme, thus their orders were rightly up-held by the learned Single Judge. Accordingly, we do not find anything which can impel us to interfere in to the findings arrived at by the learned Single Judge. Therefore, the appeal merits dismissal.

No other point was urged before us. Consequently, the appeal is dismissed and the parties are left to bear their own costs.

(Deepak Gupta),
Acting Chief Justice.

(Surinder Singh)
Judge.

June, 15 , 2007.
(bm)